IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6773 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANBHAI GOVINDBHAI TANKARE

Versus

SAIRABHAI DAWOODBHAI JARIWALA

Appearance:

MR ARUN H MEHTA for Petitioners

MR SH SANJANWALA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 12/01/2001

ORAL JUDGEMENT

1. The petitioners challenge the order of the State Government dated July 1988, copy of which is produced at Annexue-F to the petition, allowing the revision application of the present respondents and setting aside the order of the Collector, Valsad dated 31.12.1985

cancelling the Entry No. 2751 in the record of rights.

2. According to the petitioners, an inquiry was started in the Court of Deputy Collector and ALT No. 1 Umergaon in which it was found that petitioner No.2 was not the tenant in respect of Survey No. 120/1 and 127/9 of village Sanjan, but was the owner thereof. The land was earlier shown in the name of Ayeshabibi who was the daughter of uncle of the petitioner No.2 and it came to the share of the petitioner No.2 by partition. Ayeshabibi in her statement recorded on 14.6.1961, a copy of which is produced at Annexure-A collectively to the petition, admitted that Mohmedbhai Dawoodbhai had a share in the land in question and that a partition had taken place pursuant to which he was cultivating the land. On the basis of the material ascertained during the inquiry, the Deputy Collector by his order dated 16.6.1961 at Annexure-A Collectively held that Mohmedbhai Dawoodbhai was the owner of the said land which had come to his share on partition. It was recorded that Ayeshabibi had supported this fact in her statement. According to the petitioners, an entry in the record of rights was made as per Annexure-B to the petition on the basis of the said order and the name of the petitioner No.2 came to be shown as the owner/occupant of the land. The land of Survey No. 127/9 was sold by the petitioner No.2 under a registered sale deed dated 19th July, 1984 to the petitioner No.1 and the entry in the record of rights was effected by the Mamlatdar on 13th December, 1984 as per Annexure-C to the petition. The respondents filed an Appeal before the Deputy Collector saying that the land bearing Survey No. 127/9 was of their ownership and praying for cancelation of said Entry No. 2751 dated 13th December, 1984. The Deputy Collector by his order dated 28.5.1985 cancelled the Entry No. 2751. That order was challenged by the petitioners before the Collector, Valsad in Revision Application. The Collector, Valsad by his order dated 31 December, 1985 set aside the order of the Deputy Collector dated 28.5.1985 and restored the order of the Deputy Mamlatdar, Umergaon certifying the disputed entry. The order of the Collector, Valsad which is at Annexure-E to the petition, had been challenged before the State Government by the respondents and the State Government by the impugned order at Annexure-F to the petition, allowed the Revision Application and set aside the Collector's order confirming the order of cancellation of the disputed Entry No. 2751. The respondents had filed Regular Civil Suit No. 47 of 1982 in the Court of Civil Judge (J.D.) Umergaon for a declaration that the land, including the disputed survey number, was of their ownership and

seeking possession thereof from the present petitioner No.2. That suit came to be dismissed on 3rd May, 1986 as reflected from a copy of the decree which is at Annexure-G to the petition. It is stated that an Appeal is pending against that decision before the District Court, Valsad.

3. It has been recorded in the order of the Collector, Valsad at Annexure-E to the petition that the Deputy Collector had after an inquiry, made the order on 16.6.1961 holding that the land in question had come to the share of petitioner No.2 on partition and that respondent No.1 Ayeshabibi had supported this fact at the relevant time. Thereafter, the land was running in the record of rights in the ownership of the petitioner No.2. It is recorded that the order of the Deputy Collector dated 16.6.1961 was not challenged and had become final. The Collector, Valsad observed that it was after a lapse of 25 years the respondents were trying to raise the dispute against the ownership of the petitioner No.2 over the said land. The Collector, Valsad also took note of the fact that the Civil Court had made reference under Section 85 A of the Tenancy Act to the Mamlatdar and the Mamlatdar, Umergaon by his order dated 2.7.1985 had held that the question was already decided and was not required to be decided again.

4. It appears from the revisional order made by the State Government that Revisional Authority has overlooked the material on record which indicated that Ayeshabibi had admitted in an inquiry which resulted in the order dated 16.6.1961 that the disputed land had gone to the share to the petitioner No.2. The Revisional Authority has also not taken into account the decision of the Civil Court in Regular Civil Suit No. 47 of 1982 which came to be dismissed. In that suit, the respondents had claimed that they were owners of the land in question and were entitled to get the possession. It is therefore clear that the Revisional Authority has not applied its mind to the material aspects of the case, especially the findings that may have been arrived at by the Civil Court which resulted in dismissal of the suit filed by the respondents claiming ownership of the land. The impugned order has been made without considering the important material on record which had a bearing on the question of the exercise of the revisional powers by which a well reasoned orderr passed by the Collector, Valsad was set aside.

5. The impugned order at Annexure-F made by the State Government is therefore set aside with a direction

that the Revision Application may be considered and decided afresh in accordance with law after giving an appropriate opportunity to the concerned parties of being heard in the matter. The out come of the Appeal pending before the District Court, Valsad can be brought to the notice of the Revisional Authority, if it is already decided. Rule is made absolute accordingly with no order as to costs. Interim relief stands vacated.

(R.K.Abichandani,J.)

(vipul)